

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION.

CHAMBER SUMMONS No. 1575 OF 2006.

IN

SUIT No.2630 OF 1988.

M/s. Narandas M. Narielwala. Plaintiff.

Vs.

Nitco Roadways Pvt. Ltd.
And Anr.

Defendants.

Mr. Santosh Shetty i/b M. M. Vashi, Advocate
for Defendant in support.

Mr. Sagar Kadam, i/b S. Mohammedbhai & Co.
Advocate for the Plaintiff to show cause.

CORAM: D.G. KARNIK,J.

DATED: 23RD JANUARY, 2007.

P.C.:-

1. Heard the learned counsel for the
plaintiff and the defendants.

2. The Chamber Summons is taken out by the
defendant when the suit is placed on board for
hearing. Hence as per the rules the Chamber
Summons is placed before the Judge hearing the
suits.

3. The Chamber Summons is taken out for
setting aside the order directing the suit to
proceed ex-parte and without written statement

and for taking the written statement of the defendants on record. The only reason given for setting aside the "No W.S." order is that in the application is that one Mr. Jabbarbhai who was the employee of the defendant left the job in or about 1996, and therefore, the matter could not be followed and the written statement was not filed. It is worthwhile to note that suit was filed in the year 1988. On 3rd February, 1997 Vakalatnama signed by Jabbarbhai was filed in the suit. This clearly shows that the assertion in the application that Jabbarbhai left the job in 1996 is false as Jabbarbhai was in the employment in the year 1987 also.

4. The observations made by the Supreme Court in **Kailash Vs. Nanhku, A.I.R. 2005 S.C. 2441** are apposite. In para 45 (v) of the decision the Supreme Court has held that a prayer for extension of time (to file written statement) can be granted by way of an exception and for the reasons to be placed on record in writing. Request for extension of time made by the defendant shall not be granted just as a matter of routine and merely

for asking more so when the period of 90 days has expired. Extension of time may be allowed by way of an exception, for reasons to be assigned by the defendant and also be placed on record in writing, howsoever briefly, by the Court on its being satisfied. Extension of time may be allowed if it was needed to be given for the circumstances which are exceptional, occasioned by reasons beyond the control of the defendant.

5. The reason that one Officer left the company (though on facts that does not appear to be correct) is not a circumstance of exceptional nature, The defendant no.1 is a body corporate having the perpetual succession. Officers may come and go but that cannot be a ground for condoning delay of nearly ten years in filing of the written statement.

6. In my view, the delay in filing written statement is gross and is not satisfactorily explained. The Court has already directed the suit to proceed without the written statement of the defendant and see no reason to set

aside that order.

7. The chamber summons is accordingly
dismissed.

[D.G.KARNIK, J]